2204.

SUPREME COURT OF THE UNITED STATES.

No. 196.

ABRAM SHEPPARD AND JOHN DUNCAN, PLAINTIFFS IN ERROR,

vs.

PEYTON S. GROVES.

IN ERROR TO THE DISTRICT COURT UNITED STATES, FOR THE DISTRICT OF TEXAS.

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GIDEON, Print.

[SEAL.] In the district court of the United States, for the district of Texas. April term, 1851.

PEYTON S. GRAVES
vs.
ABRAM SHEPPARD and JOHN DUNCAN.

Transcript for the Supreme Court of the United States.

THE UNITED STATES OF AMERICA,
District of Texas, to wit:

At a district court of the United States, having and exercising the powers and jurisdiction of a circuit court of the same, for the district of Texas, begun and held at the city of Galveston, on the first Monday in April, in the year of our Lord one thousand eight hundred and fifty-one. Present: the honorable John C. Watrous, judge of said district; William P. Ballinger, esqr., attorney; Joseph Bates, esqr., marshal; and James Love, esqr., clerk.

Among others were the following proceedings, to wit:

PEYTON S. GRAVES
vs.
ABRAM SHEPPARD and JOHN DUNCAN.

Be it remembered, that heretofore, to wit, on the seventeenth day of March, in the year of our Lord one thousand eight hundred and fifty one, the said Peyton S. Graves, by his attorney, F. H. Merriman, filed in the district court here his petition, complaining against the said Abram Sheppard and John Duncan, in the words and of the tenor following, to wit:

In the United States district court, district of Texas.

To the honorable John C. Watrous, judge of the United States district court, within and for said district.

Your petitioner, Peyton S. Graves, a citizen of the State of Alabama, respectfully represents to your honor, that Abram Sheppard and John Duncan, both residents and citizens of the State of Texas, residing in Matagorda county, in said State and district, are jointly and severally indebted to your petitioner in the sum of eighteen hundred and forty-five dollars and ninety-four cents, together with interest thereon at eight per cent. per annum, from the first day of January, one thousand eight hundred and forty-five, until paid.

For that heretofore, to wit, on the 23d day of September, 1844, in the town and county of Matagorda, in the said district and State of Texas, the said Abram Sheppard, by the name and signature of Abram

Sheppard, and the said John Duncan, executed and delivered to your petitioner their joint and several promissory note, dated the day and year last aforesaid, and signed Abram Sheppard and John Duncan, by which, on the first day of January, eighteen hundred and fifty-one, they, the said Sheppard and Duncan, jointly and severally promised to pay Peyton S. Graves, your petitioner, or order, at the counting-house of R. & D. G. Mills, in Brazoria county, the sum of eighteen hundred an forty-five dollars and ninety-four cents, for value received with eight per cent. per annum, interest thereon, from the first day of January next, (meaning January 1845,) until paid; which note the said Sheppard and Duncan, and each of them neglect and refuse to pay, although the same has been long due and often demanded, to the great damage of petitioner, to wit, the sum of four thousand dollars.

Wherefore, your petitioner, the said Peyton S. Graves, prays that the said Abram Sheppard and John Duncan, may be cited to appear and answer this suit at the next term of your honorable court, to be held in the county of Galveston, in said district and State of Texas; and that then and there judgment be rendered in favor of petitioner against said Sheppard and Duncan, jointly and severally, for the amount of said debt, and same sum named in said note, with interest, damages, and costs of suit, and for all such other and further or different relief as the petitioner may be entitled to.

F. H. MERRIMAN,
March 17th, 1851. *Attorney for plaintiff.*

And thereupon, on the same day, to wit, the seventeenth day of March, A. D. 1851, summonses were issued in due form from the said district court, in the words and of the following tenor, to wit:

UNITED STATES DISTRICT COURT,
District of Texas.

The President of the United States of America, to the marshal, or any of his lawful deputies, of the district of Texas, greeting:

You are hereby commanded to summon Abram Sheppard, if he be found in your district, to be and appear before the honorable the district court of the United States, at a court to be holden in and for the district of Texas, at the city of Galveston, on the first Monday of April next, to answer the petition and complaint of Peyton S. Graves against Abram Sheppard and John Duncan in an action amounting to the sum of four thousand dollars, of which you will serve the said defendant, Abraham Sheppard, with the accompanying copy of said petition.

Witness the honorable John C. Watrous, judge of said court, and the seal of said court, at the city of Galveston, this seventeenth
[L. S.] day of March, A. D. 1851, and the seventy-fifth year of the independence of the United States of America.

JAMES LOVE, *Clerk.*

Upon which said summons is the following endorsement, to wit:
Received March 17th, 1851, and executed March 31st, 1851, by serving the defendant with a true copy of this summons, also a certified copy of petition as furnished by the clerk.

JO. BATES, *U. S. M.*,
By W. P. CHURCHILL,
U. S. deputy marshal.

UNITED STATES DISTRICT COURT,
District of Texas.

The President of the United States of America, to the marshal, or any of his lawful deputies, of the district of Texas, greeting:

You are hereby commanded to summon John Duncan, if he be found in your district, to be and appear before the honorable the district court of the United States, at a court to be holden in and for the district of Texas, at the city of Galveston, on the first Monday of April next, to answer the petition and complaint of Peyton S. Graves against Abram Sheppard and John Duncan, in an action amounting to the sum of four thousand dollars, of which you will serve the said defendant, John Duncan, with the accompanying copy of said petition.

Witness the honorable John C. Watrous, judge of said court, and seal of said court, at the city of Galveston, this seventeenth
[L. S.] day of March, A. D. 1851, and the seventy-fifth year of the independence of the United States of America.

JAMES LOVE, *Clerk.*

Upon which said summons is the following endorsement, to wit:
Received March 17th, 1851, and executed March 31st, 1851, by serving the defendant with a true copy of this summons, and also a certified copy of petition as furnished by the clerk.

J. BATES, *U. S. M.*,
By W. P. CHURCHILL,
U. S. deputy marshal.

And afterwards, on the tenth day of April, A. D. 1851, the defendants, by their counsel, Jones, Butler, and Ballinger, filed their answer in the words and of the tenor following, to wit:

United States district court, district of Texas.

PEYTON S. GRAVES
vs.
ABRAM SHEPPARD and JOHN DUNCAN.

And now come the defendants and say, severally, that the citations which issued against these defendants respectively, should be quashed, because the same do not correctly state or show the cause of action in the petition, but state the same incorrectly.

Defendants further say, that the return upon the citations should be quashed, because they are no sufficient service of said citations, and in support of the above pleas in abatement these defendants refer to said citations and the returns thereon.

And they pray judgment on their above pleas.

ABRAM SHEPPARD,
JOHN DUNCAN.

These defendants further say, that the plaintiff is not a citizen of the State of Louisiana, and was not at the time of filing said petition, but is and was a citizen of Texas.

ABRAM SHEPPARD,
JOHN DUNCAN.

These defendants further say, severally, that the petition and the matters and things therein contained are not sufficient in law, and that these defendants are not bound to answer the same.

And for cause of demurrer they say, that the petition shows no sufficient cause of action, that the plaintiff is not entitled to the relief prayed.

Wherefore, these defendants pray judgment of said petition.

JONES, BUTLER & BALLINGER.

And for further answer these defendants deny all and singular the allegations in plaintiff's petition contained, and require strict proof thereof.

And for further answer these defendants say, that before the beginning of this suit, to wit, at &c., on &c., these defendants fully paid and discharged the promissory note in the suit mentioned, to the plaintiff, and that said plaintiff ought not to have any cause of action against these defendants.

And for further answer these defendants deny that the said note sued on was given for any good and sufficient consideration. Wherefore, they say plaintiff ought not to maintain his suit.

JONES, BUTLER & BALLINGER,
Attorneys for defendants.

And afterwards, on the sixteenth day of May, A. D. 1851, the following order was made, to wit:

PEYTON S. GRAVES
vs.
SHEPPARD and DUNCAN.

On motion of plaintiff's attorney, by leave of the court, he filed an amendment to plaintiff's petition.

Which said amendment is in the words and of the tenor following, to wit:

2207.

U. S. district court, for the district of Texas, May term, 1851.

PEYTON S. GRAVES
vs.
ABRAM SHEPPARD and JOHN DUNCAN. } No. 361, on the law docket.

Now at this term, the plaintiff in the above named cause, by leave of the court first had and obtained, amends his petition as follows:

On the first page, 7th line, after the word "Graves," insert the words "who is;" on the same line strike out Alabama, and insert in lieu thereof the word Louisiana.

On the first page, 25th line, after the word "petitioner," add "who was then a resident citizen of the State of Alabama."

F. H. MERRIMAN,
Attorney for plaintiff.

And afterwards, on the twenty-first day of May, A. D. 1851, this cause came on to be heard; whereupon the following order was made, to wit:

PEYTON S. GRAVES
vs.
ABRAM SHEPPARD and JOHN DUNCAN. } No. 361.

On this day came the parties by their attorneys, and thereupon came on to be heard defendants demurrer to plaintiff's petition. After argument of counsel, because it seems to the court that the law is for the plaintiff, it is ordered that the demurrer be overruled. And then was heard the defendants pleas in abatement; and because it seems to the court that the law is for the plaintiff, it is ordered that they be overruled. And thereupon came a jury of good and lawful men, viz: Prior Bryan, Charles Atkins, George C. Rains, Jacob Smith, Elmanson Lewis, James Welsh, Stephen Southwick, E. L. Ufford, John L. Darragh, J. C. Thackeray, Abram Jacobs and William Evans, who being elected, tried and sworn, well and truly to try the issues joined, on their oaths do say: "we the jury find for the plaintiff two thousand eight hundred and fourteen $\frac{9}{100}$ dollars. $2,814 $\frac{9}{100}$.

And afterwards, on the twenty-sixth day of May, A. D. 1851, the court here rendered judgment in this cause, in the words and figures following, to wit:

PEYTON S. GRAVES
vs.
ABRAM SHEPPARD and JOHN DUNCAN. } No. 361.

The verdict of the jury having been rendered in this cause on a former day of the term, it is now ordered to be entered on the minutes as the judgment of the court.

It is therefore considered by the court that the plaintiff recover of the defendants the sum of two thousand eight hundred and fourteen dollars and nine cents, in manner and form by the jurors aforesaid assessed,

and his costs about his suit in this behalf expended; for which execution may issue.

And on motion of plaintiff's attorney, and it appearing to the court that the judgment in this cause is excessive in the sum of twenty-four dollars and sixty-eight cents; it is ordered, that the aforesaid sum of $24 68c. be released.

On the trial of this cause, the defendants, by their attorneys, excepted to the opinions of the court, given upon said trial, and tendered their bill of exceptions, which was received, signed, and sealed by the court, and ordered to be made a part of the record in the cause.

The said bill of exceptions is in these words, to wit:

PEYTON S. GRAVES
vs.
ABRAM SHEPPARD and JOHN DUNCAN. } No. 361.

Be it remembered, that on the trial of this cause upon the issues upon the plea to the jurisdiction, and also upon the pleas in bar filed by defendants, which, by consent of counsel, were all submitted together, the plaintiff to support the said issues on his part joined, offered in evidence to the jury the promissory note sued on as follows:

$1,845 94c.

On the first day of January, eighteen hundred and fifty-one, we jointly and severally promise to pay Payton S. Graves, or order, at the counting-house of R. & D. G. Mills, in Brazoria county, the sum of eighteen hundred and forty-five dollars ninety-four cents, for value received, with eight per cent. per annum interest thereon from the first day of January next, until paid.

Matagorda, September 23d, 1844.

ABM SHEPPARD,
JOHN DUNCAN.

To the admissibility of which said promissory note the defendants objected, because the place at which said note was dated, "Matagorda," was not alleged in the description of said note in plaintiff's petition; which objection was overruled by the court, and the said note was read in evidence to the jury; to which ruling of the court the defendant excepted.

The said plaintiff then offered in evidence the depositions de bene esse of Alphonzo Rugely and James D. Blair, with the caption and certificate of the officer thereto taking the same, and the certificates of the judge and clerk of the authority of said officer, as follows:

UNITED STATES OF AMERICA,
Eastern district of Louisiana,
City of New Orleans, ss:

Be it remembered, that on this twenty-third day of April, in the year of our Lord one thousand eight hundred and fifty-one, before me,

Robt. M. Lusher, a commissioner duly appointed on the 29th April, 1848, by the circuit court of the United States, for the fifth circuit and eastern district of Louisiana, under and by virtue of the acts of Congress, entitled "an act for the more convenient taking of affidavits and bail in civil causes, depending in the courts of the United States," passed February 20th, 1812; and the act of Congress entitled "an act addition to an act entitled 'an act for the more convenient taking of affidavits and bail in civil causes, depending in the courts of the United States, passed March 1st, 1817;'" and the act passed Sept. 24, 1789, entitled "an act to establish the judicial courts of the United States," personally appeared Alphonzo J. Rugely and Jas. D. Blair, residing in New Orleans, witnesses, of sound mind and lawful age, for the plaintiff in a civil suit, now depending in the district court of the United States, in and for the district of Texas, wherein Peyton S. Graves is plaintiff, and Abram Sheppard and John Duncan are defendants, No. 361 of the law docket of said court.

And the said Alphonzo J. Rugely and James D. Blair, being by me first carefully examined, and cautioned, and sworn on the holy evangelist of Almighty God to testify the whole truth, and nothing but the truth, did depose and say:

1st. Alphonzo J. Rugely. That he is well acquainted with Peyton S. Graves, the plaintiff in the above entitled cause, and has been acquainted with him for more than fifteen years past; that in September, 1844, he, the plaintiff, was living in Selma, Alabama, where, or in its vicinity, he had been living for upwards of ten years, and that he did not remove thence until the month of February, 1849; that during the whole of said period he was a citizen of the State of Alabama, and vested with all the rights and privileges appertaining to such citizenship; since his removal from Alabama, Mr. Graves has been residing in this State of Louisiana, of which he is now a citizen, doing business in this city of New Orleans.

Witness knows the facts above stated from his having himself been a citizen of the State of Alabama, residing in Mobile, and having business connexions with a house in said city, Harrison and Blair, doing commission business for Mr. Graves, and from his having frequently seen him, and recognised him as a citizen of the State up to 1846, when witness removed to New Orleans.

Witness has had further and frequent business transactions with Mr. Graves since said time, and ample sources of information as to his citizenship.

A. J. RUGELY.

ROBT. M. LUSHER, *Commissioner.*

2d. James D. Blair, of New Orleans, being also duly cautioned and sworn as aforesaid, a witness of sound mind and lawful age, deposes that, he has known the plaintiff, Peyton S. Graves, for the last ten years, during which time he knows him to have been a resident citizen of the State of Alabama, except during the last year or

two, in which he has been a citizen of Louisiana. This witness knows from his having had frequent business transactions with the plaintiff since his, the witness's, removal to Louisiana in 1846, and before then, from the business connexions of his, the witness's father, in Mobile, with the plaintiff, witness being a clerk in his father's house at the time.

JAMES D. BLAIR.

ROBT. M. LUSHER, *U. S. Commissioner.*

UNITED STATES OF AMERICA,
Eastern district of Louisiana, city of New Orleans.

Robert M. Lusher, a commissioner duly appointed by the circuit court of the United States, for the fifth circuit and eastern district of Louisiana, under and by virtue of the acts of Congress entitled an act for the more convenient taking of affidavits and bail in civil causes depending in the courts of the United States, passed February 20th, 1812, and the act of Congress entitled "an act in addition to an act entitled an act for the more convenient taking of affidavits and bail in civil causes depending in the courts of the United States," passed March the 1st, 1817, and the act passed September 24th, 1789, entitled "an act to establish the judicial courts of the United States," do certify, that the reason for taking the foregoing deposition is, and the fact is, that the witnesses, Alphonzo J. Rugely and James D. Blair, are residents of this city of New Orleans, within the eastern district of Louisiana, beyond the jurisdiction of the district court of Texas. I further certify, that no notification was made out and served on the defendant's agent or attorney to be present at the taking of the deposition, and to put interrogatories if he or they should think fit, and that no notification of the time and place of taking the said deposition was made out and served on the said defendants, because neither the said defendants, nor any attorney or agent of the said parties, was, at the time of taking said deposition, within one hundred miles of the said city of New Orleans, the place of taking said deposition.

I further certify, that on the aforesaid twenty-third day of April, A. D. 1851, I was attended by Peyton S. Graves, esq., the plaintiff, and by the witnesses; and the witnesses were by me carefully examined, and cautioned, and sworn to testify the whole truth, and their depositions were by me reduced to writing in the presence of the witnesses, and after carefully reading the same to the witnesses, they subscribed the same in my presence. I have retained the said deposition in my possession for the purpose of sealing up, directing, and forwarding them to the court for which they were taken. I further certify, that I am not of counsel or attorney to either of the parties in said deposition mentioned, or in any way interested in the event of said civil cause depending between Peyton S. Graves, plaintiff, and Abram Sheppard and John Duncan, defendants, No. 361.

In testimony whereof I have hereunto set my hand and seal this

twenty-fourth day of April, in the year of our Lord one thousand eight hundred and fifty-one.

ROBT. M. LUSHER, [L. S.]
U. S. commissioner, circuit and district courts U. S., for the eastern district of Louisiana.

U. S. circuit court, fifth circuit and eastern district of Louisiana.

I, John W. Gurley, clerk of said court, do certify, that Robert M. Lusher, by whom the within depositions were taken and signed, was at the time of so doing, is now, and has been since the twenty-ninth day of April, A. D. 1848, as appears from the records of said circuit court, a duly appointed and legally qualified commissioner of the United States, for this eastern district of Louisiana, having full authority to take depositions, and do all other acts which such commissioners are by the laws of the United States authorized to do.

In testimony whereof I hereunto set my hand and the seal of said court, at New Orleans, this twenty-fourth day of April, A. D. 1851. [L. S.]

J. W. GURLEY, *Clerk.*

I, Theodore Howard McCaleb, U. S. judge, for the eastern district of Louisiana, do certify, that John W. Gurley, by whom the foregoing certificate is signed, is and was at the time of so signing, the only appointed and legally authorized clerk of the circuit court of the United States, for the 5th circuit and eastern district of Lousiana; that to all his official attestations in such capacity full faith and credit are due and ought to be given, and that the above certificate is in due form of law.

In faith whereof I hereunto set my hand and seal, at New Orleans, this 24th April, 1851.

THEO. H. McCALEB. [L. S.]

To the admissibility of which said depositions the defendants, by their counsel, objected, because said depositions were not taken in pursuance of the acts of Congress, and as evidence for this suit, and it was particularly objected that no reasons which authorize the taking of depositions de bene esse were shown in the certificate of said commissioner taking the same. But the court ruled that it knew judicially mail routes, and the distances thereof, and that New Orleans, the place of taking said depositions, was more than one hundred miles from Galveston, the place of trial of the cause, and admitted the said depositions in evidence, to which ruling of the court the defendants excepted. The plaintiff then before reading said depositions to the jury, called as a witness W. P. Ballinger, defendants' attorney, and asked said witness whether he had travelled from New Orleans to Galveston; and if so, whether the distance was over or under one hundred miles; to the admissibility of which questions, and the evidence sought, defendants, by

their counsel objected, but the court overruled said objection, and required said questions to be answered; whereupon the witness answered that he had travelled from New Orleans to Galveston, the distance was known as greater than one hundred miles, and witness had no doubt it was; the said plaintiff then read said depositions to the jury; to all of which the defendants, by their attorneys excepted, and pray that this their bill of exceptions may be signed, sealed, and enrolled before the jury retire, which is accordingly done.

JOHN C. WATROUS, [SEAL.]
U. S. judge.

And afterwards, to wit, on the 26th day of May, A. D. 1851, the defendants filed their bond in the words and figures following, to wit:

PEYTON S. GRAVES
vs.
ABRAM SHEPPARD and JOHN DUNCAN. } In error.

Know all men by these presents, that we, Abraham Sheppard, John Duncan, and Alexander Moore, are held and firmly bound unto the above named Peyton S. Graves, in the sum of five thousand six hundred and thirty dollars, to be paid to the said Peyton S. Graves, his executors or administrators; to which payment well and truly to be made, we bind ourselves, and each of us, jointly and severally, and our and each of our heirs, executors, and administrators firmly by these presents. Sealed with our seals this 26th day of May, A. D. 1851.

Whereas the above named Abram Sheppard and John Duncan have prosecuted a writ of error to the Supreme Court of the United States, to reverse the judgment rendered in the above entitled cause by the district court, for the district of Texas.

Now, therefore, the condition of this obligation is such, that if the above named Abram Sheppard and John Duncan shall prosecute their said writ of error to effect, and answer all costs and damages if they shall fail to make good their said plea, then this obligation to be void, otherwise be and remain in full force and virtue.

ABRAM SHEPPARD, [SEAL.]
JOHN DUNCAN, [SEAL.]
ALEX. MOORE. [SEAL.]

Signed, sealed, and delivered in presence of—
JAMES LOVE, *Clerk.*

Approved, May 26th, 1851.

JOHN C. WATROUS,
U. S. judge.

UNITED STATES OF AMERICA,
District of Texas.

In the United States district court, for the district of Texas.

PEYTON S. GRAVES
vs.
ABRAM SHEPPARD and JOHN DUNCAN.

I, James Love, clerk of the district court of the United States, for the district of Texas, at Galveston, certify that the foregoing eighteen pages is a correct transcript and true copy of the record and all the proceedings had in the above entitled cause.

In testimony whereof I have hereunto set my hand and affixed the seal of said court, at the city of Galveston, this twenty-first day [SEAL.] of November. one thousand eight hundred and fifty-one, and of the independence of the United States the seventy-sixth.

JAMES LOVE, *Clerk*.

UNITED STATES OF AMERICA, *ss.*

The President of the United States of America, to the judge of the district court of the United States, for the district of Texas, greeting:

Because in the record and proceedings, as also in the rendition of a judgment in a plea, which is in the said district court of the United States, for the district of Texas, before you, between Peyton S. Graves and Abram Sheppard and John Duncan, a manifest error hath happened to the great damage of the said Abram Sheppard and John Duncan, as by their complaint appears; and it being fit that the error, if there hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf, you are hereby commanded if judgment be therein given, that then, under seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same at Washington on the first Monday in December next, in the said Supreme Court, to be then and there held, that the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein to correct that error, what of right and according to the law and custom of the United States should be done.

Witness the honorable Roger B. Taney, chief justice of the said Supreme Court of the United States, this the twenty-sixth day of May, in the year of our Lord one thousand eight hundred [SEAL.] and fifty-one, and of the independence of the United States the seventy-fifth. JAMES LOVE, *Clerk*.

UNITED STATES OF AMERICA, *ss.*

To Peyton S. Graves, greeting:

SIR: You are hereby cited and admonished to be and appear at a

Supreme Court of the United States, to be holden at the city of Washington on the first Monday in December next, pursuant to a writ of error filed in the clerk's office of the United States district court, for the district of Texas, wherein Abram Sheppard and John Duncan are plaintiffs, and you are defendants in error, to show cause, if any there be, why the judgment in said writ of error mentioned should not be corrected, and speedy justice should not be done to the parties in that behalf.

Witness the honorable John C. Watrous, judge of the said district court of the United States, for the district of Texas, this twenty-sixth day of May, in the year of our Lord one thousand eight hundred and fifty-one, and of the independence of the United States the seventy-fifth.

[SEAL.]

JOHN C. WATROUS,
District judge of the United States, for the district of Texas.

I acknowledge service of the above citation, August 25th, 1851.
F. H. MERRIMAN,
Attorney for Peyton S. Graves.

I acknowledge service of the above citation, September 29th, 1851.
PEYTON S. GRAVES.

2211.

SUPREME COURT OF THE UNITED STATES.

No. 198.

SAMUEL MARSH, WILLIAM E. LEE, AND EDWARD C. DELAVAN, PLAINTIFFS IN ERROR,

vs.

EDWARD BROOKS AND VIRGINIA C., HIS WIFE, CHAS. P. BILLON AND FRANCES E., HIS WIFE, WALTER G. REDDICK, AND DABNEY C. REDDICK.

IN ERROR TO THE DISTRICT COURT, U. S., FOR THE SOUTHERN DISTRICT OF IOWA.

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Gideon, Printer.

District of Iowa, southern division.

Pleas before the district court of the United States, within and for the southern division of the district of Iowa, on the 5th day of June, A. D. 1851.

Be it remembered, that heretofore, to wit, on the 20th day of May, A. D. 1850, Edward Brooks et al. filed in the said court their precipe for a writ of summons against George L. Colman in action of right, to wit:

Precipe.

UNITED STATES OF AMERICA.

United States district court, first or southern division of the district of Iowa, to the clerk of said district court.

You are hereby required to issue forthwith a writ of summons in an action of right, wherein Edward Brooks and Virginia C. Brooks, his wife, formerly Virginia C. Reddick, Charles P. Billon and Frances E. Billon, his wife, formerly Frances E. Reddick, Walter J. Reddick, and Dabney C. Reddick, heirs-at-law of Thomas F. Reddick, deceased, are plaintiffs, and George L. Colman is defendant, returnable to the first day of the next term of said court.

HENRY W. STARR,
May 20th, 1850. *Plaintiffs' att'y.*

And also the following agreement of counsel, to wit:

Agreement of parties.

It is agreed between the plaintiffs and defendant, and is admitted, that the plaintiffs, named in the writ and declaration, are the heirs and legal representatives of Thomas F. Reddick, to whom the patent issued for the land described in declaration; and that, on trial, no proof shall be required of plaintiffs to prove said heirship or the marriage of Brooks and Billon to Virginia C. and Frances E., daughters of said Thomas F. Reddick; and that plaintiffs are now residents of Iowa.

HENRY W. STARR,
For plaintiffs.
H. T. REID,
Attorney for Marsh, Lee & Delevan.
1848, Nov. 15th, Fort Madison.

And afterwards, to wit, on the day and year first aforesaid, the said Edward Brooks et al. filed in the clerk's office aforesaid the following declaration, to wit:

Declaration.

UNITED STATES OF AMERICA.

United States district court, first or southern division of the district of Iowa.

EDWARD BROOKS and Virginia C. Brooks, his wife, formerly Virginia C. Reddick, Charles P. Billon and Frances E. Billon, his wife, formerly Frances E. Reddick, and Dabney C. Reddick, heirs-at-law of Thomas F. Reddick, deceased, plaintiffs,

vs.

GEORGE L. COLMAN, defendant.

And now comes the above named plaintiffs, of whom Edward Brooks and Virginia C. Brooks, his wife, Frances E. Billon, wife of Charles P. Billon, Walter J. Reddick, and Dabney C. Reddick, are now residents of the State of Iowa, and citizens and residents of the State of Missouri, and the said Charles P. Billon is now a resident of the State of Iowa, and a resident and citizen of the State of Illinois, and claim against George L. Colman, defendant, who is a resident and citizen of the State of Iowa, a tract of land, with the appurtenances, lying in the county of Lee, and State of Iowa, and described as follows:

Beginning on the right and southwesterly bank of the Mississippi (the most northern corner of this survey) at a stone sixteen inches wide, eighteen inches long, and two inches thick, from which an elm tree, twenty-five inches in diameter, bears south twenty-seven degrees and fifteen minutes east, distant two hundred and thirty-seven links; and an elm tree, twenty-five inches in diameter, bears south seventy-nine degrees and thirty minutes east, distant three hundred and thirty-six links; thence south thirty-four degrees west, being the northwestern boundary line of this survey; at four chains and forty-one links, the line between sections three and ten, (twenty-four chains and thirty-one links east of the quarter section corner;) at fourteen chains and fifty-nine links, leaves the inundated land and water; at seventeen chains and fifty links, a road bears nearly east and west, leading from the barracks, lying within this survey, to Fort Madison, (from this point the old Pawnee village bears north sixty degrees west about three hundred yards, afterwards inhabited by the Sac Indians about the year eighteen hundred and three. The Sac Indians also inhabited the place now occupied by the barracks, on the east side of the creek, which is south sixty degrees east of this point, about three hundred yards distant;) at twenty-nine chains and twenty links, a branch, thirty links wide, runs south; at forty-four chains, leaves the bush and scattering timber, and enters smooth prairie, bearing east and west; at sixty-six chains and fifty links, an old Indian trace bears south sixty degrees west, and north sixty degrees east, eighty-eight chains and fifty links, to a post, the most western corner of this survey, in a mound under which are deposited three stones, edges down-

wards, one of which is eight inches square and two inches thick, and the two others about four inches square and two inches thick; thence south, fifty-four degrees and fifteen minutes east, being the southwestern boundary line of this survey; at seventeen chains and twenty-three links intersects the line between sections ten and fifteen, thirty-two chains and sixty links east of the corner to sections nine, ten, fifteen, and sixteen, at a post five inches in diameter, in a mound five feet square at bottom and two feet at top; under which mound are deposited three small stones, each about four inches square, one of them three inches and the others two inches thick; at thirty-one chains and fifty links a path bears north and south, leading from St. Francisville to the aforesaid barracks at the head of the rapids of the Mississippi; at thirty-nine chains a narrow valley runs along the foot of the bluff; at fifty-three chains and fifty links leaves level prairie, and enters the foot of the bluff; at sixty chains and fifty links the top of the bluff; at seventy-six chains and thirty-three links, intersects the line between sections fourteen and fifteen, (five chains and twenty-eight links north of the quarter section corner on said line,) at a post five inches in diameter, two feet in the ground, from which an elm (old marked) ten inches in diameter, bears south fifty-two degrees east, distant one hundred and sixty links, and a bur oak, forked near the ground, thirty inches in diameter, bears south thirteen degrees east, distant two hundred and eleven links eighty chains, to a post eight inches in diameter, (the most southern corner of this survey,) two feet in the ground, from which a burr oak, (marked S. 14, T. 66 N., R. 5 W.,) twenty-five inches in diameter, bears north eighty-one degrees east, distant seventy-eight links, and an elm, twenty-five inches in diameter, (marked with notch and blaze,) bears north sixty-four degrees and thirty minutes west, distant one hundred and fifteen links; thence north thirty-four degrees east, being the southeastern boundary line of this survey, at twenty five chains and ninety-seven links, a black oak twenty-four inches in diameter; leaves the prairie and enters scattering timber, bearing east and west; at thirty-five chains and forty-one links a black oak, twenty-five inches in diameter; at forty-four chains and fourteen links intersects the line between sections eleven and fourteen, fifty-two chains and eighty-three links west of the corner to sections eleven, twelve, thirteen, and fourteen, at a post five inches in diameter, from which an elm twelve inches in diameter bears south eighty-three degrees and thirty minutes east, distant forty-one links, and an elm ten inches in diameter bears north fifty-five degrees east, distant sixty-eight links; at sixty-two chains and seventy-eight links a spring branch runs westwardly; at twenty-nine chains and seventy-eight links the top of the bluff bears east and west; at eighty-five chains and seventy-eight links, the foot of the bluff bears east and west eighty-eight chains and fifteen links, to a stone thirty inches long, sixteen inches wide, and eight inches thick, twelve inches in the ground, the edge in the direction of the line being the most eastern corner of this survey, on the right and southerly bank of the Mississippi; from which stone an elm, ten inches in diameter, mark-

ed "P. S.," bears north fifty-three degrees west, distant forty-seven links, and a buckeye, sixteen inches in diameter, bears south three degrees and thirty minutes west, distant thirty-four links; thence up stream, along the right and southwesterly bank of the Mississippi river, with the meanders thereof, north eighty-three degrees west, seven chains and ninety-one links; thence north seventy-six degrees west, ten chains; at five chains the old place of Louis Honore Tesson's house, where the orchard is, bears south ten degrees west, distant about one hundred and fifty links; thence north fifty-eight degrees west, three chains and fifty links; thence north sixty-nine degrees west, five chains and thirty links; a branch twenty links wide runs from the southwest; thence north eighty-five degrees west, at five chains and eighty links, the right bank of the mouth of a slough; thence north sixty-five degrees west, at three chains and eighty-seven links, the left bank of the mouth of the slough, into which a small branch flows from the south, nine chains and seventy-four links, leaves timber extending southward; thence north fifty-six degrees west, at seven chains the garrison, (the course of which is south, seventy degrees west, eleven chains,) nearly opposite the centre of the garrison; thence north thirty degrees west, sixteen chains and fifty links; at seven chains and twenty-five links a stable, one hundred links to the left, which was formerly used by the soldiers of this station; thence north fifty-three degrees west, six chains and fifty links, to the south side of a slough or overflowed land at the mouth of a creek; thence north twelve degrees west, crossing the creek, eleven chains and eight links, to the place of beginning; being in township sixty-six north, of range five west, of the fifth principal meridian, and being designated on the connected plats as surveys numbered three thousand and ninety-five.

And hereupon the said plaintiffs say, that they have right to the immediate possession of said property, and *and* to the ownership thereof, in fee simple, and also to damages for its detention, and offer to prove that such is their right.

HENRY W. STARR,
Att'y for plaintiffs.

And afterwards, to wit, on the day and year first aforesaid, the said plaintiffs, Edward Brooks et al., sued out of the clerk's office aforesaid the following writ of summons against George L. Colman, to wit:

Summons.

UNITED STATES OF AMERICA,
Southern division, district of Iowa, ss.

To the marshal of said district, greeting:

In the name of the President of the United States we command you to summon George L. Colman, citizen of, and resident in, the State of Iowa, if he be found in your bailiwick, to be and appear before the

judge of the district court of the United States for the southern division of the district of Iowa aforesaid, at Burlington, on the first Monday of June next, to answer unto Edward Brooks and Virginia C. Brooks, his wife, formerly Virginia C. Reddick, Charles P. Billon, and Frances E. Billon, his wife, formerly Frances E. Reddick, Walter J. Reddick, and Dabney C. Reddick, heirs-at-law of Thomas F. Reddick, deceased, in an action of right. And have you then and there this writ.

Witness the hon. J. J. Dyer, judge of the district court, this twentieth day of May, A. D. 1850, and in the 75th year of the independence of the United States of America.

[L. S.]

T. S. PARVIN,
Clerk U. S. dist. court.

By W. C. CLARKE, *Deputy.*

Upon which writ was the following endorsement, to wit:

EDWARD BROOKS et al.
vs.
George L. Colman. } Summons.

Action of right.

Filed May 20th, 1850.

T. S. PARVIN, *Clerk*,
By W. C. CLARKE, *Deputy clerk.*

H. W. STARR, *Atty.*

And afterwards, to wit, on the twenty-fourth day of May, in the year last aforesaid, the said writ was returned to the court aforesaid, by the marshal of said district, endorsed as follows, to wit:

Endorsement.

Served the within writ upon the within named George Colman by reading the same to him.
May 24th, 1850.

STEPH. B. SHELLEDY,
Marshal,
By JOHN BUEL, *Deputy.*

Service -	$2 00
Mileage, 110 -	11 10
	$13 10

And afterwards, to wit, on the fifth day of June, in the year last aforesaid, the following entry was made:

Entry for June term, 1850.

EDWARD BROOKS et al.
vs.
George L. Colman. } Action of right.

Substitution of Marsh et al., defts.

And now, on this day, comes Samuel Marsh, Wm. E. Lee, and Edward C. Delevan, by their attorney, Hugh T. Reid, and moves the court for leave to substitute themselves defendants, as landlords of the said Colman, defendant in the above entitled cause, in his place and stead, and be allowed to plead to said action as defendants thereto.

And thereupon, no objection being made thereto by the said plaintiffs, leave is given to make such substitution of the said Samuel Marsh, William E. Lee, and Edward C. Delevan, as landlords, with leave to plead to and defend said action.

And afterwards, to wit, on the day and year last aforesaid, the said Samuel Marsh, Wm. C. Lee, and Ed. C. Delevan, filed in the clerk's office aforesaid the following plea, to wit:

Plea.

DISTRICT COURT OF THE UNITED STATES,
For the southern division of the district of Iowa.

May term, 1850, at the city of Burlington.

EDWARD BROOKS and others
vs.
Samuel Marsh, William E. Lee, and Edward C. Delevan. } Action of right.

Landlords substituted in the place of George L. Colman.

District court for said district, May 5th, 1850.

The said Samuel Marsh, William E. Lee, and Edward C. Delevan, come and deny the right of the said plaintiffs, Edward Brooks and others, to the tract of land, with the appurtenances, and damages for the detention thereof, as set forth in their declaration, or to any part thereof; and hereupon he prays a jury to determine the truth of this plea.

H. T. REID,
Atty. for deft.

Continuance.

And afterwards, to wit, on the said 5th day of June, A. D. 1850, on motion of the said Edward Brooks et al., this cause is continued until the next term of this court.

June term, 1851.

EDWARD BROOKS and Virginia Brooks, his wife, formerly Virginia C. Reddick, Charles P. Billon, and Frances E. Billon, his wife, formerly Frances E. Reddick, Walter J. Reddick, and Dabney C. Reddick, heirs-at-law of Thomas F. Reddick, deceased, } Right.

vs.

SAMUEL MARSH, W. E. Lee, and E. C. Delevan.

Trial.

And afterwards, to wit, on the fifth day of June, one thousand eight hundred and fifty-one, comes the said plaintiffs, by H. W. Starr, their attorney, and the said defendants, by Hugh T. Reid, their attorney, and prays a jury to try the issue joined in this case.

Jury.

Whereupon, for trying said issue, comes a jury, to wit, W. C. Hanna, C. V. Harris, Jas. R. Scott, B. W. Clark, Jno. D. Wright, Danl. S. Moore, George Gearhart, Calvin Gamage, Johnson Pierson, C. O. Lockhard, D. M. Ewing, and George Blickhaus, who were duly empannelled and sworn.

The parties then offered their evidence; and after the giving of their evidence and the argument of counsel, the plaintiffs prayed the court to instruct the jury as follows, to wit:

Instructions to the jury asked for by plaintiffs, and given.

1st. That under the treaty with France of date 30th April, 1803, and the several acts of Congress passed in pursuance thereof for settlement of titles in the Territory of Missouri, Tesson, and Reddick as his assignee, had a valid subsisting interest in the land in controversy, at the date of the report made by the recorder, Frederick Bates, which was not divested by the reservation in the treaty with the Sac and Fox tribes or nations of Indians given in evidence, or the act of Congress granting to the half breeds of said tribes, of date 30th June, 1834, which was also given in evidence.

2d. That the claim of Tesson, and Reddick as his assignee, as reported, was substantially confirmed by the act of Congress approved April 29th, 1816.

3d. That the patent taken in connexion with the other evidence conveyed to the plaintiffs a fee simple title to the land in controversy, and overrides the title set up by defendants.

Which said instructions were given by the court.

The defendants then prayed the court to instruct the jury as follows, to wit:

1st. That under the report of the recorder of land titles, given in

evidence by the plaintiffs, they are not entitled to recover the land unless their title thereto has been confirmed by an act of Congress.

Asked for by defendants, and refused.

2d. That the true construction of the act of Congress of 29th April, 1816, given in evidence by the plaintiffs, does not confirm their title to the lands sued for, if the Indian title to the same was not at that time extinguished.

3d. That the treaty of August 4th, 1824, with the Sac and Fox Indians, is a recognition by the United States at the date of said treaty of the Indian right to the lands in controversy, the same being within the Sac and Fox half breed reservation.

4th. That the Indian title to the lands in controversy was not extinguished prior to the 4th of August, 1824.

5th. That the plaintiffs have shown no right to recover the land in controversy in this suit.

The first of which instructions prayed by the defendants was given by the court, and the second, third, fourth, and fifth instructions as prayed were refused to be given; to which rulings and decisions of the court in giving the instructions prayed for by the plaintiffs, and in refusing to give the second, third, fourth, and fifth instructions prayed for by the defendants, the defendants, by their counsel, except, and filed the following bill of exceptions, to wit:

Bill of exceptions taken by defendants.

Be it remembered, that on the trial of this cause before the court and jury, the plaintiffs proved that Louis Honore Tesson settled on the tract of land in controversy in 1798, and on the 30th of March, 1799, obtained from the Spanish government the following permit, to wit:

Permit.

Permission to settle from Z. Trudeau to Louis Honoré Tesson.

Il est permis à Mr. Louis Honoré de s'établier au haut du rapide de la riviere des Moines, et son établissement formé, il sera *e'ent* à Mr. le Gouverneur General pour lui obtenir la concession d'un espace convenable pour faire valoir le dit établissement, et en même temps le rendre utile au commerce de pelleteries de ce pays, surviller les sauvages, et les contenir dans la fidélité qu'ils doivent à Sa. M. Sa conduite à cet égard devant lui servir de recommendation pour être favorisé par le gouvernement de manier à lui rendre advantageoux, tout ce qu'il pourra faire de utile à co-operer à l'agrandissement du commerce dont il serva participant, et à cet égard il lui sera permis de traiter avec tous les sauvages qui habitent sur cette rive du domaine de S. M., et de ne souffrir aucune autre traiteur en concurrence avec lui que ceux que auront des passeports signés de notre mains.

St. Louis, le 30 Mars, 1799.

ZENON L. TRUDEAU.

And proved that said Louis Honoré Tesson had possession, and inhabited, cultivated, and had houses and orchards and fields on said land in 1798, 1799, 1800, and until 1805, and that all Tesson's right, under said permit and settlement, passed by mesnes conveyances to Thomas F. Reddick. That said Thomas F. Reddick duly presented and proved, before Frederick Bates, the recorder of land titles at St. Louis, Missouri, his said claim and chain of title from Tesson to said land, as by the report of said recorder of land titles, dated November 1st, 1815, appears; which report is contained at large in the American State Papers, and which report was given in evidence, and is made a part of this bill.

Report of recorder of land titles.

The following extract from said report being all that is contained in said report in relation to the land in controversy, to wit:

Opinions of the recorder of land titles for Missouri Territory as to claims entered under act of 13th of June, 1812, and proven before 1st of January, 1814, as provided by the act of 3d of March, 1813, comprehending, also, the claims in the late district of Arkansas, which, by act of 2d of August, 1813, were permitted to be entered until 1st of January, 1814, and proven 1st of July, 1814; together with the extensions of quantity provided by the 4th section of the act of 3d of March, 1813, and confirmations under the act of 12th April, 1814.

Warrant or order of survey.	Survey.	Notice to the Recorder, by whom.	Quantity claimed.
Permit to settle by Z. Trudeau, Lt. Governor, 30th March, 1799.	At the head of rapids of river Des Moines.	Thos. F. Reddick, ass. estate of Jas. Robideaux, ass. of Louis Honore Tesson.	7056 arpens.

Where situated.	Possession, inhabitation, cultivation.	Opinions of the Recorder.
On Mississippi, 18 miles above Des Moines river, city of St. Charles.	Possession, inhabitation, and cultivation, 1798, '99, 1800, till 1805. He had houses, orchards, and fields.	Granted 640 acres, if Indian rights extinguished. F. 125, Miss'y 73.

RECORDER'S OFFICE, ST. LOUIS,
May 3*d*, 1850.

I certify, that the above is correctly transcribed from page 1, of book No. 1, and page 33, of book No. 2, being two of the five small books

in this office with the following endorsement on the first, and also on the fifth book, believed to be in the handwriting of Frederick Bates, to wit:

These five small books are originals, in the proper handwriting of the undersigned, being his decisions on land claims since the adjournment of the late board; they were arranged and fairly transcribed for reports to the Commissioner of the General Land Office, but not yet recorded in the books, because they have no authority till sanctioned by Government. St. Louis, Nov. 1st, 1815.

FRED'K BATES,
Recorder of land titles.
ADOLPHE RENARD,
U. S. recorder of land titles in the State of Missouri.

Which extract, duly certified and proven, was given in evidence by the plaintiffs.

Acts of Congress.

Plaintiffs also gave in evidence the act of Congress, entitled "an act for the confirmation of certain claims to land in the western district of the State of Louisiana and in the Territory of Missouri." Approved April 29th, 1816, as follows, to wit:

An act for the confirmation of certain claims to land in the western district of the State of Louisiana, and in the Territory of Missouri.

Whereas, by the eighth section of the act of third March, one thousand eight hundred and seven, it is required that the commissioners for ascertaining and adjusting the title and claims to land in the then Territories of Orleans and Louisiana should arrange their reports into three general classes, the second of which classes should contain claims which, though not embraced by the provisions of the several acts of Congress, ought nevertheless, in the opinion of the commissioners, to be confirmed, in conformity with the laws, usages, and customs of the Spanish government. And whereas the commissioners in and for the western district of the State of Louisiana, formerly Territory of Orleans, in their several reports of the sixteenth of October, one thousand eight hundred and twelve; fourth of December, one thousand eight hundred and twelve; ninth of March, one thousand eight hundred and thirteen; sixth of April, one thousand eight hundred and fifteen; first of May, one thousand eight hundred and fifteen, and fourth of May, one thousand eight hundred and fifteen, have formed this second class, recommending the claims which it embraces for confirmation, and have designated the same by the letter B. And the register of the land office and receiver of public moneys, acting as commissioners for adjusting the titles and claims to land in the said district, in their report dated the thirteenth day of December, one thousand eight hundred and fifteen, under the act giving further time for registering claims to land in the western district of the Territory of Orleans, passed the tenth day

of March, one thousand eight hundred and twelve, the "act giving further time for registering claims to land in the eastern and western districts of the Territory of Orleans," passed the twenty-seventh day of February, one thousand eight hundred and thirteen, and the act of the twelfth day of April, one thousand eight hundred and fourteen, have arranged the claims into the following classes, to wit, one, two, three, four, five, six, seven, eight, nine, ten, eleven; therefore—

Section 1st. Be it enacted, by the Senate and House of Representatives of the United States of America in Congress assembled, That the claims marked B, and described in the several classes in the above mentioned reports of the commissioners for the western district of the State of Louisiana, and formerly Territory of Orleans, and recommended by them for confirmation, be and the same are hereby confirmed: Provided, nevertheless, that under no one claim shall any person or persons be entitled under this act, to more than the quantity contained in a league square.

Sec. 2. And be it further enacted, That all claims embraced in the reports of the recorder of land titles, acting as commissioners for ascertaining and adjusting the titles and claims to land in the Territory of Missouri, dated November first, one thousand eight hundred and fifteen, and February second, one thousand eight hundred and sixteen, when the decision of the said commissioner is in favor of the claimants, shall be, and the same are hereby confirmed, to wit, confirmations of village claims under the act of Congress of the thirteenth day of June, one thousand eight hundred and twelve; grants of the late board of commissioners appointed for ascertaining and adjusting the titles and claims to land in the Territory of Missouri, extended by virtue of the fourth section of the act of the third of March, one thousand eight hundred and thirteen; grants and confirmations under the several acts of Congress, commencing with the act of the thirteenth day of June, one thousand eight hundred and twelve.

Sec. 3. And be it further enacted, That in all cases not provided for by law, for patent certificates to issue, every person and the legal representatives of every person, whose claim to a tract of land is confirmed by this or any former act, and who has not already obtained a patent certificate for the same, shall, whenever his claim shall have been located and surveyed, according to law, be entitled to receive from the register of the land office, at Opelousas, in the State of Louisiana, or from the recorder of land titles, in the Territory of Missouri, as the case may be, a certificate, stating that the claimant is entitled to a patent for such tract of land, by virtue of this act, for which certificate the officer issuing the same shall receive one dollar, and the certificate shall entitle the party to a patent for the tract of land, which shall issue in like manner as is provided by law for patents to issue for lands purchased of the United States.

Approved April 29th, 1816.

The plaintiffs also gave in evidence the following certificate of the acting recorder of land titles at St. Louis, Missouri, May 16th, 1850.

Certificate recorder of land titles.

Patent certificates issued by F. R. Conway, recorder of land titles.

Date of Patent certificate.	No. of patent certificate.	Name of claimant and remarks.	No. of survey.	Quantity in acres.	To whom delivered.
May 17, 1838.	1157	Thos. F. Reddick, ass. of estate of Jos. Robideaux, ass. of Louis Tesson, Honore's, in S. 66. N. R., 5 W., 5 P. M.	3095	640	Edw'd Brooks, esq., St. Louis.

RECORDER'S OFFICE,
St. Louis, May 16, 1850.

I certify that the above is correctly abstracted from a register in this office, purporting to contain the entries of patent certificates issued by the recorder of land titles, (on surveys of private land claims confirmed in Missouri, returned to the said recorder, according to law, by the surveyor general of Illinois and Missouri) in order that patents may be granted on said surveys. It is further *certify*, that the practice of recording said patent certificates in this office, began with certificate No. 1,221, dated the 28th August, 1848.

ADOLPHE RENARD,
U. S. recorder of land titles in the State of Missouri.

The plaintiffs also gave in evidence a patent to the said Thomas F. Reddick for the land in controversy, of which the following is a copy, to wit:

Patent.

The United States of America, to all to whom these presents shall come, greeting.

Know ye, that Thomas F. Reddick, assignee of the estate of Joseph Robideaux, assignee of Louis Honoré Tesson, has deposited in the General Land Office a certificate numbered one thousand one hundred and fifty-seven, of the receiver of land titles at St. Louis, Missouri, whereby it appears, that in pursuance of the several acts of Congress for the adjustment of titles and claims to lands, the said Thomas F. Reddick, assignee of the estate of Joseph Robideaux, assignee of Louis Honore Tesson, has been confirmed in his claim to a tract of land containing six hundred and forty acres, bounded and described as follows, to wit:

Beginning on the right and southwesterly bank of the Mississippi,

(the most northern corner of this survey,) at a stone sixteen inches wide, eighteen inches long, and two inches thick, from which an elm twenty-five inches in diameter bears south twenty-seven degrees and fifteen minutes east, distant two hundred and thirty-seven links; and an elm twenty-five inches in diameter bears south seventy-nine degrees and thirty minutes east, distant three hundred and thirty-six links; thence south thirty-four degrees west, being the northwestern boundary line of this survey, at four chains and forty-one links, the line between sections three and ten (twenty-four chains and thirty-one links east of the quarter-section corner,) at fourteen chains and fifty-nine links, leaves the inundated land and water; at seventeen chains and fifty links a road bears nearly east and west leading from the barracks, lying within this survey, to Fort Madison; (from this point the old Pawnee village bears north sixty degrees west, about three hundred yards, afterwards inhabited by the Sac Indians; about the year eighteen hundred and three, the Sac Indians also inhabited the place now occupied by the barracks on the east side of the creek, which is south sixty-degrees east of this point, about three hundred yards distant;) at twenty-nine chains and twenty links a branch thirty links wide runs south; at forty-four chains leaves the brush and scattering timber and enters smooth prairie, bearing east and west; at sixty-six chains and fifty links an old Indian trace bears south sixty degrees west, and north sixty degrees east, eighty-eight chains and fifty links to a post the most western corner of this survey, in a mound under which are deposited three stones, edges downward, one of which is eight inches square and two inches thick, and the two others about four inches square and two inches thick; thence south fifty-four degrees and fifteen minutes east, being the southwestern boundary line of this survey; at seventeen chains and twenty-three links intersects the line between sections ten and fifteen, thirty-two chains and sixty links east of the corner to sections nine, ten, fifteen, and sixteen, at a post five inches in diameter, in a mound five feet square at bottom and two feet at top, under which mound are deposited three small stones, each about four inches square, one of them three inches and the others two inches thick; at thirty-one chains and fifty links a path bears north and south, leading from St. Francisville to the aforesaid barracks at the head of the rapids of the Mississippi; at thirty-nine chains a narrow valley runs along the foot of the bluff; at forty-three chains and fifty links leaves level prairie and enters the foot of the bluff; at sixty chains and fifty links the top of the bluff; at seventy-six chains and thirty-three links intersects the line between sections fourteen and fifteen, (five chains and twenty-eight links north of the quarter-section corner on said line,) at a post five inches in diameter two feet in the ground, from which an elm (old marked) ten inches in diameter bears south fifty-two degrees east, distant one hundred and sixty links, and a burr oak, forked near the ground, thirty inches in diameter, bears south thirteen degrees east, distant two hundred and eleven links, eighty chains to a post eight inches in

diameter, (the most southern corner of this survey,) two feet in the ground, from which a burr oak, (marked S. 14. T. 66 N., R. 5 W., twenty-five inches in diameter, bears north eighty-one degrees, east distant seventy-eight links, and an elm, twenty-five inches in diameter, (marked with a notch and blaze,) bears north sixty-four degrees and thirty minutes west, distant one hundred and fifteen links; thence north thirty-four degrees east, being the southeastern boundary line of this survey, at twenty-five chains and ninety-seven links, a black oak twenty-four inches in diameter; leaves the prairie and enters scattering timber, bearing east and west; at thirty-five chains and forty-one links, a black oak, twenty five inches in diameter; at forty-four chains and fourteen links, intersects the line between sections eleven and fourteen, (fifty-two chains and eighty-three links west of the corner to sections eleven, twelve, thirteen, and fourteen, at a post five inches in diameter, from which an elm twelve inches in diameter bears south eighty-three degrees and thirty minutes east, distant forty-one links, and an elm ten inches in diameter bears north fifty-five degrees east, distant sixty-eight links; at sixty-two chains and seventy-eight links a spring branch runs westwardly; at seventy-nine chains and seventy-eight links, the top of the bluff bears east and west; at eighty-five chains and seventy-eight links, the foot of the bluff bears east and west eighty-eight chains and fifty links to a stone thirty inches long, sixteen inches wide, and eight inches thick, twelve inches in the ground, the edge in the direction of the line, being the most eastern corner of this survey, on the right and southerly bank of the Mississippi; from which stone an elm ten inches in diameter, marked "P. S.," bears north fifty-three degrees west, distant forty-seven links, and a buckeye, sixteen inches in diameter, bears south three degrees and thirty minutes west, distant thirty-four links; thence up stream, along the right and southwesterly bank of the Mississippi river, with the meanders thereof, north eighty-three degrees west, seven chains and ninety-one links; thence north seventy-six degrees west, ten chains; at five chains the old place of Louis Honoré Tesson's house, where the orchard is, bears south ten degrees west, distant about one hundred and fifty links; thence north fifty-eight degrees west, three chains and fifty links; thence north sixty-nine degrees west, five chains and thirty links; a branch twenty links wide runs from the southwest; thence north eighty-five degrees west, at five chains and eighty links, the right bank of the mouth of a slough; thence north sixty-five degrees west, at three chains and eighty-seven links, the left bank of the mouth of the slough, into which a small branch flows from the south, nine chains and seventy-four links, leaves timber extending southward; thence north fifty-six degrees west, at seven chains the garrison, (the course of which is south seventy degrees west,) eleven chains, nearly opposite the centre of the garrison; thence north thirty degrees west, sixteen chains and fifty links, at seven chains and twenty-five links, a stable one hundred links to the left, which was formerly used by the soldiers of this station; thence north fifty-three degrees west, six chains and fifty links

to the south side of a slough or overflowed land at the mouth of a creek; thence north twelve degrees west, crossing the creek, eleven chains and eight links, to the place of beginning. Being in township sixty-six north, of range five west, of the fifth principal meridian, and being designated on the connected plat as surveys numbered three thousand and ninety-five.

There is therefore granted by the United States unto the said Thomas F. Reddick, assignee aforesaid, and to his heirs, the tract of land above described; to have and to hold the said tract, with the appurtenances, unto the said Thomas F. Reddick, assignee as aforesaid, and to his heirs and assigns forever.

In testimony whereof I, Martin Van Buren, President of the United States, have caused these letters to be made patent, and the seal of the General Land Office to be hereunto affixed.

Given under my hand at the city of Washington, the seventh day of February, in the year of our Lord one thousand eight [L. S.] hundred and thirty-nine, and of the independence of the United States the sixty-third.

By the President:

MARTIN VAN BUREN,
By M. VAN BUREN, Jr., *Sec'y.*

H. M. GARLAND,
Recorder of the General Land Office.

Recorded, vol. 9, pages 43, 44, 45, 46, and 47.

The plaintiffs also proved that they, the plaintiffs, were the heirs and legal representatives of the said Thomas F. Reddick, and that the defendants were in possession of the land in controversy at the commencement of this suit, and rested their case.

Treaty with Sacs and Foxes.

The defendants then gave in evidence the treaty between the Government of the United States and the Sac and Fox tribes or nations of Indians, made at Washington, on the 4th day of August, A. D. 1824. The first article of which treaty is as follows, to wit:

"Article 1st. The Sac and Fox tribes or nations of Indians, by their deputations in council assembled, do hereby agree, in consideration of certain sums of money, &c., to be paid to the said Sac and Fox tribes by the Government of the United States, as hereinafter stipulated, to cede and forever quit claim, and do, in behalf of their said tribes or nations, hereby cede, relinquish, and for ever quit claim, unto the United States, all right, title, interest, and claim, to the lands which the said Sac and Fox tribes have or claim within the limits of the State of Missouri, which are situated, lying, and being between the Mississippi and Missouri rivers, and a line running from the Missouri, at the entrance of Kansas river, north one hundred miles, to the northwest

corner of the State of Missouri, and from thence east to the Mississippi; it being understood that the small tract of land lying between the rivers Des Moines and the Mississippi, and the section of the above line between the Mississippi and the Des Moines, is intended for the use of the half-breeds belonging to the Sac and Fox nations; they holding it, however, by the same title, and in the same manner, that other Indian titles are held."

The defendants also gave in evidence the following act of Congress, to wit, entitled—

Acts of Congress.

"An act to relinquish the reversionary interest of the United States in a certain Indian reservation, lying between the rivers Mississippi and Des Moines.

"Sec. 1. Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That all the right, title, and interest, which might accrue or revert to the United States to the reservation of land lying between rivers Des Moines and Mississippi, which was reserved for the use of the half-breeds belonging to the Sac and Fox nations, now used by them, or some of them, under a treaty made and concluded between the United States and the Sac and Fox tribes or nations of Indians, at Washington, on the fourth day of August, in the year one thousand eight hundred and twenty-four, be, and the same are hereby, relinquished, and vested in the said half-breeds of the Sac and Fox tribes or nations of Indians, who, at the passage of this act, are, under the reservation in the said treaty, entitled by the Indian title to the same, with full power and authority to transfer their portion thereof, by sale, devise, or descent, according to the laws of the State of Missouri.

"Approved June 30, 1834."

The defendants then proved that the land in controversy is included within the exterior boundary lines of the Sac and Fox half-breed reservation, referred to in the said treaty of 1824, and act of Congress of 1834, given in evidence by said defendants.

The defendants then gave in evidence the following act of Congress, to wit, entitled—

"An act confirming to the legal representatives of Thomas F. Reddick a tract of six hundred and forty acres of land.

"Sec. 1. Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That all the right, title, claim, and interest, that the United States have in and unto a certain tract or parcel of land containing six hundred and forty acres, situate on the left bank of the Mississippi river, about eighteen miles above the mouth of the Des Moines river, in fractional township num-

ber sixty-six north of the base line, of range number five west of the fifth principal meridian, in the territory recently attached to the Territory of Michigan, as will more fully appear on reference to the plat of survey executed by Jenifer T. Sprigg, be, and the same is, relinquished to the heirs of Thomas F. Reddick. Provided, nevertheless, if said land shall be taken by any older or better claim not emanating from the United States, the Government will not be in any wise responsible for any remuneration to said heirs. And provided, also, that should said land be included in any reservation heretofore made under treaty with any Indian tribe, that the said heirs be, and they are hereby, authorized to locate the same quantity, in legal divisions or subdivisions, on any unappropriated land of the United States in said Territory, subject to entry at private sale.

"Approved July 1, 1836."

The defendants then proved that the six hundred and forty acres of land, referred to in the act of Congress of July 1, 1836, given in evidence by defendants, lies within the exterior boundary lines of the said Sac and Fox half-breed reservation, made by the said treaty of August 4, 1824, given in evidence by defendants.

The defendants also proved that the land in controversy is worth more than two thousand dollars, and rested their case.

Instruction prayed for.

The plaintiffs then prayed the court to instruct the jury—

1st. That under the treaty with France, of date 30th April, 1803, and the several acts of Congress passed in pursuance thereof, for settlement of titles in the Territory of Missouri, Tesson & Reddick, as his assignee, had a valid subsisting interest in the land in controversy, at the date of the report made by the recorder, Frederick Bates, which was not divested by the reservation in the treaty with the Sac and Fox tribes or nations of Indians given in evidence, or the act of Congress granting to the half-breeds of said tribes, of date 30th June, 1834, which was also given in evidence.

2d. That the claim of Tesson & Reddick, as his assignee, as reported, was substantially confirmed by the act of Congress, approved April 27, 1816.

3d. That the patent, taken in connexion with other evidence, conveyed to the plaintiffs a fee simple title to the land in controversy, and overrides the title set up by defendants.

Which said instructions were given by the court.

Defendants then prayed the court to instruct the jury.

1st. That under the report of the recorder of land titles given in evidence by the plaintiffs, they are not entitled to recover the land unless their title thereto has been confirmed by an act of Congress.

2d. That the true construction of the act of Congress of 29th of

April, 1816, given in evidence by the plaintiffs, does not confirm their title to the lands sued for, if the Indian title to the same was not at that time extinguished.

3d. That the treaty of August 4th, 1824, with the Sac and Fox Indians, is a recognition by the United States at the date of said treaty of the Indian right to the lands in controversy, the same being within the Sac and Fox half-breed reservation.

4th. That the Indian title to the land in controversy was not extinguished prior to the 4th of August, 1824.

5th. That the plaintiffs have shown no right to recover the land in controversy in this suit.

The first of which instructions prayed by the defendants was given by the court; and the second, third, fourth, and fifth instructions, as prayed, were refused to be given. To which rulings and decisions of the court in giving the instructions prayed for by the plaintiffs, and in refusing to give the second, third, fourth, and fifth instructions prayed for by the defendants, the defendants, by their counsel, except, and pray that this their bill of exceptions may be signed, sealed, and made a part of the record.

J. J. DYER. [SEAL.]

Which said bill of exceptions was signed and sealed by his honor, the judge, and the jury charged by the court.

And thereupon the jury retired to consider of their verdict.

Jury returned.

And afterwards, to wit, on the same day, the jury returned into court, and by their foreman rendered the following verdict, to wit:

Verdict.

"We, the jury, find the right to the tract of land described in the declaration to be in the plaintiffs, and assess their damages for the detention thereof at one dollar."

Whereupon the court rendered the following judgment, to wit:

Judgment.

It is therefore ordered and adjudged by the court here, that said plaintiffs do have and recover of said defendants the possession of the tract of land described in said declaration, to wit:

Beginning on the right and southwesterly bank of the Mississippi (the most northern corner of this survey) at a stone sixteen inches wide, eighteen inches long, and two inches thick, from which an elm, twenty-five inches in diameter, bears south twenty-seven degrees and fifteen minutes east, distant two hundred and thirty-seven links; and an elm tree, twenty-five inches in diameter, bears south seventy-nine degrees and thirty minutes east, distant three hundred and thirty-six links; thence south thirty-four degrees west, being the northwestern boundary line of this survey; at four chains and forty-one links, the line between

sections three and ten, (twenty-four chains and thirty-one links east of the quarter section corner;) at fourteen chains and fifty-nine links, leaves the inundated land and water; at seventeen chains and fifty links, a road bears nearly east and west, leading from the barracks, lying within this survey, to Fort Madison, (from this point the old Pawnee village bears north sixty degrees west, about three hundred yards, afterwards inhabited by the Sac Indians about the year eighteen hundred and three. The Sac Indians also inhabited the place now occupied by the barracks, on the east side of the creek, which is south sixty degrees east of this point, about three hundred yards distant;) at twenty-nine chains and twenty links, a branch, thirty links wide, runs south; at forty-four chains, leaves the brush and scattering timber, and enters smooth prairie, bearing east and west; at sixty-six chains and fifty links, an old Indian trace bears south sixty degrees west, and north sixty degrees east, eighty-eight chains and fifty links, to a post, the most western corner of this survey, in a mound under which are deposited three stones, edges downwards, one of which is eight inches square and two inches thick, and the two others about four inches square and two inches thick; thence south fifty-four degrees and fifteen minutes east, being the southwestern boundary line of this survey; at seventeen chains and twenty-three links intersects the line between sections ten and fifteen, thirty-two chains and sixty links east of the corner to sections nine, ten, fifteen, and sixteen, at a post five inches in diameter, in a mound five feet square at bottom and two feet at top; under which mound are deposited three small stones, each about four inches square, one of them three inches and the others two inches thick; at thirty-one chains and fifty links a path bears north and south, leading from St. Francisville to the aforesaid barracks at the head of the rapids of the Mississippi; at thirty-nine chains a narrow valley runs along the foot of the bluff; at fifty-three chains and fifty links leaves level prairie, and enters the foot of the bluff; at sixty chains and fifty links the top of the bluff; at seventy-six chains and thirty-three links, intersects the line between sections fourteen and fifteen, (five chains and twenty-eight links north of the quarter section corner on said line,) at a post five inches in diameter, two feet in the ground, from which an elm (old marked) ten inches in diameter, bears south fifty-two degrees east, distant one hundred and sixty links, and a burr oak, forked near the ground, thirty inches in diameter, bears south thirteen degrees east, distant two hundred and eleven links eighty chains, to a post eight inches in diameter, (the most southern corner of this survey,) two feet in the ground, from which a burr oak, (marked S. 14, T. 66 N., R. 5 W.,) twenty-five inches in diameter, bears north eighty-one degrees east, distant seventy-eight links, and an elm, twenty-five inches in diameter, (marked with notch and blaze,) bears north sixty-four degrees and thirty minutes west, distant one hundred and fifteen links; thence north thirty-four degrees east, being the southeastern boundary line of this survey; at twenty five chains and ninety-seven links, a black oak twenty-four inches in diam-

eter; leaves the prairie and enters scattering timber, bearing east and west; at thirty-five chains and forty-one links a black oak, twenty-five inches in diameter; at forty-four chains and fourteen links intersects the line between sections eleven and fourteen, fifty-two chains and eighty-three links west of the corner to sections eleven, twelve, thirteen, and fourteen, at a post five inches in diameter, from which an elm twelve inches in diameter bears south eighty-three degrees and thirty minutes east, distant forty-one links, and an elm ten inches in diameter bears north fifty-five degrees east, distant sixty-eight links; at sixty-two chains and seventy-eight links a spring branch runs westwardly; at seventy-nine chains and seventy-eight links the top of the bluff bears east and west; at eighty-five chains and seventy-eight links, the foot of the bluff bears east and west eighty-eight chains and fifty links, to a stone thirty inches long, sixteen inches wide, and eight inches thick, twelve inches in the ground, the edge in the direction of the line being the most eastern corner of this survey, on the right and southerly bank of the Mississippi; from which stone an elm, ten inches in diameter, marked "P. S.," bears north fifty-three degrees west, distant forty-seven links, and a buckeye, sixteen inches in diameter, bears south three degrees and thirty minutes west, distant thirty-four links; thence up stream, along the right and southwesterly bank of the Mississippi river, with the meanders thereof, north eighty-three degrees west, seven chains and ninety-one links; thence north seventy-six degrees west, ten chains; at five chains the old place of Louis Honore Tesson's house, where the orchard is, bears south ten degrees west, distant about one hundred and fifty links; thence north fifty-eight degrees west, three chains and fifty links; thence north sixty-nine degrees west, five chains and thirty links; a branch twenty links wide runs from the southwest; thence north eighty-five degrees west, at five chains and eighty links, the right bank of the mouth of a slough; thence north sixty-five degrees west, at three chains and eighty-seven links, the left bank of the mouth of the slough, into which a small branch flows from the south, nine chains and seventy-four links, leaves timber extending southward; thence north fifty-six degrees west, at seven chains the garrison, (the course of which is south seventy degrees west, eleven chains,) nearly opposite the centre of the garrison; thence north thirty degrees west, sixteen chains and fifty links; at seven chains and twenty-five links a stable, one hundred links to the left, which was formerly used by the soldiers of this station; thence north fifty-three degrees west, six chains and fifty links, to the south side of a slough or overflowed land at the mouth of a creek; thence north twelve degrees west, crossing the creek, eleven chains and eight links, to the place of beginning; being in township sixty-six north, of range five west, of the fifth principal meridian, and being designated on the connected plat as survey numbered three thousand and ninety-five.

And that said plaintiffs have a writ of possession in this case.

It is further ordered and adjudged by the court here, that the said plaintiffs also have and recover of said defendants as well the sum of

one dollar damages, assessed by the jury as aforesaid, as the sum of fifty-eight (58) dollars [and] eleven (11) cents, the costs and charges of this suit.

UNITED STATES,
District of Iowa, ss.

Certificate of clerk.

I, T. S. Parwin, clerk of the United States district court, within and for the said district of Iowa, do certify, that the foregoing transcript is truly copied and taken from the record of the proceedings of the United States district court, within and for said district of Iowa, in the southern division of said district.

In testimony whereof I have hereto set my name and affixed the [SEAL.] seal of the said court at Burlington, in the southern division of said district, this 17th day of August, A. D. 1851.

T. S. PARWIN, *Clk.*

Certificate of the judge.

I, J. J. Dyer, judge of the United States district court, for the district of Iowa, do certify, that T. S. Parwin, whose signature is affixed to the certificate aforesaid, is clerk of said court, and that his attestation aforesaid is in due form of law; and that to all his acts so done full faith and credit are and ought to be given in judicature and thereout.

Witness my hand, this 17th day of August, A. D. 1851.

J. J. DYER, *Judge.*

Fee Bill—Fee Bill.

Clerk.—Clerk's fees—

Issuing summons	$1 00	
Issuing subpœnas (2)	50	
Entering cause on C. C. (2)	25	
Entering ap. parties, 2 sets	37	
Issue joined	18	
Imp. jury	19	
Motions (3)	60	
Orders (3)	60	
Cont. 12½, docketing 25, bar do. 12½	50	
Judgment docket 25, entering verdict	75	
Filing pap. 1.60, taking bond 50	2 10	
Entering judgment	3 00	
Tax costs, 50, bill do. 50	1 00	
	11 04	
Add ⅓	3 68	
		$14 72
Transcript with seal, &c.		21 80

Marshal.—Marshal's fees—

Service summons,	2 00,	mileage -	-	11 10=13	10
" subpœna,	1 37	" -	-	17 00=18	37
" "	87	" -	-	11 00=11	87
					$43 34

Writ of error.

UNITED STATES OF AMERICA, *ss.*

The President of the United States of America, to the judge of the district court of the United States, for the southern division of the district of Iowa, greeting:

Because in the record and proceedings, as also in the rendition of a judgment in an action of right in said district court before you, between Edward Brooks and his wife, Virginia C. Brooks, and Charles P. Billon and Frances C. Billon, his wife, Walter J. Reddick, and Dabney C. Reddick, plaintiffs, and Samuel Marsh, William E. Lee, and Edward C. Delevan, defendants, a manifest error hath happened to the great damage of said Samuel Marsh, William E. Lee, and Edward C. Delevan, as by their complaint appears; and it being fit that the error, if any there hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf, you are hereby commanded, if judgment be therein given, that then, under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same at Washington on the first Monday in December next, in the said Supreme Court to be then and there held; that the record and proceedings being inspected, the said Supreme Court may cause further to be done therein, to correct that error, what of right and according to law and custom of the United States should be done.

Witness the honorable Roger B. Taney, chief justice of the said Supreme Court of the United States, this 5th day of June, in [SEAL] the year of our Lord eighteen hundred and fifty-one, and of the independence the seventy-sixth.

T. S. PARVIN, *Clerk.*

Citation.

UNITED STATES OF AMERICA, *ss.*

To Edward Brooks and Virginia C. Brooks, his wife, Charles P. Billon and Frances E. Billon, his wife, Walter J. Reddick, and Dabney C. Reddick, greeting:

You are hereby cited and admonished to be and appear at the Supreme Court of the United States, to be holden at Washington on the first Monday in December next, pursuant to a writ of error filed in the clerk's office of the district court of the United States, for the southern

division of the district of Iowa, wherein Samuel Marsh, William E. Lee, and Edward C. Delevan, are plaintiffs, and you are defendants in error, to shew cause, if any there be, why judgment in the said writ of error mentioned, should not be corrected, and speedy justice should not be done to the parties in that behalf.

Witness the honorable J. J. Dyer, judge of the said district court of the United States, for the southern division of the district of Iowa, this 5th day of June, 1851.

[SEAL]

J. J. DYER, *Judge*.

Service.

Service acknowledged, June 6th, 1851.

H. W. STARR,
Att'y for def'ts in error.

District court of the United States, for the southern division of the district of Iowa.

EDWARD BROOKS and his wife, Virginia C. Brooks, Charles P. Billon and his wife, Frances E. Billon, Walter J. Reddick, and Dabney C. Reddick,
vs.
SAMUEL MARSH, William E. Lee, and Edward C. Delevan.
} In error.

Bond.

Know all men by these presents, that we, Samuel Marsh, William E. Lee, Edward C. Delevan, and David W. Killbourne, are held and firmly bound unto Edward Brooks and Virginia C. Brooks, his wife, formerly Virginia C. Reddick, Charles P. Billon and Frances E. Billon, his wife, formerly Frances E. Reddick, and Walter J. Reddick, and Dabney C. Reddick, heirs at law of Thomas F. Reddick, deceased, in the sum of two hundred dollars, to be paid to the said Edward Brooks and Virginia C. Brooks, Charles P. Billon and Frances E. Billon, Walter J. Reddick, and Dabney C. Reddick, their *their* executors, or administrators; to which payment, well and truly to be made, we bind ourselves, and each of us, jointly and severally, and our, and each of our heirs, executors, and administrators, firmly by these presents.

Sealed with our seals, and dated this 5th day of June, A. D. 1851.

Whereas the above named Samuel Marsh, William E. Lee, and Edward C. Delevan have prosecuted a writ of error to the Supreme Court of the United States, to reverse the judgment rendered in the above entitled suit by the district court of the United States, for the southern division of the district of Iowa.

Now, therefore, the condition of this obligation is such, that if the above named Samuel Marsh, William E. Lee, and Edward C. Delevan shall prosecute their said writ of error to effect, and answer all